

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE CONTINENTAL INSURANCE
COMPANY, a corporation,

Plaintiff,

vs.

KAWASAKI KISEN KAISHA, LTD.
D/B/A "K" LINE, a foreign corporation; "K"
LINE AMERICA, INC., a foreign
corporation; and DOE ONE through DOE
TEN,

Defendants.

CASE NO.: 07-cv-06148 WHA

[PROPOSED] ORDER GRANTING THE
MOTION OF KAWASAKI KISEN
KAISHA, LTD. AND "K" LINE AMERICA,
INC. TO DISMISS PURSUANT TO THE
TOKYO DISTRICT COURT FORUM
SELECTION CLAUSE

Date: April 17, 2008
Time: 8:00 a.m.
Location: 450 Golden Gate Ave.
San Francisco, CA
Courtroom 9, 19th Floor
Honorable William Alsup

The Motion of Defendants Kawasaki Kisen Kaisha, Ltd. and "K" Line America, Inc. for an Order dismissing the action against them pursuant to the Tokyo District Court forum selection clause in the bills of lading, came on regularly for hearing before this Court on April 17, 2008, at 8:00 a.m., the Honorable William Alsup, United States District Judge, presiding.

The Court having reviewed the notice of motion, the memoranda of points and authorities, declarations and exhibits filed by the parties, and the pleadings and documents on file in this action, as well as hearing oral argument of counsel,

1 THE COURT HEREBY ORDERS THAT:

- 2 1. The parties agreed in the forum selection clause of the bills of lading that any
3 action under the bills of lading or in connection with the carriage of the goods
4 shall be brought in the Tokyo District Court in Japan.
- 5 2. The language of the forum selection clause is mandatory because it
6 provides that “any action” under the bills of lading “shall” be brought before the
7 Tokyo District Court.
- 8 3. Under the Supreme Court decisions in M/S BREMEN v. Zapata Off-Shore Co.,
9 and Vimar Seguros Y Reaseguros S.A. v. M/V SKY REEFER, and the decisions
10 applying the law as expressed therein, the Tokyo District Court forum selection
11 clause in this case is *prima facie* valid and should be enforced unless Plaintiffs
12 can clearly show that enforcement of the forum selection clause would be
13 unreasonable and unjust, or that the clause is invalid for such reasons as fraud or
14 overreaching.
- 15 4. Plaintiffs have failed to show that the Japanese forum selection clause should not
16 be enforced for reasons such as fraud or overreaching.
- 17 5. Further, enforcement of the Japanese forum selection clause would not be
18 unreasonable and unjust under the circumstances of this case. Plaintiffs have
19 failed to show that the contractual forum would be so inconvenient that they will
20 for all practical purposes be deprived of their day in Court. Plaintiffs have also
21 failed to show that enforcement of the forum selection clause would contravene a
22 strong public policy of this forum.
- 23 6. “K” Line America, Inc., is the agent of Kawasaki Kisen Kaisha, Ltd. in the United
24 States and performed certain agency services for Kawasaki Kisen Kaisha, Ltd.
25 with respect to the cargo. As an expressed beneficiary of the Himalaya Clause of
26 the bills of lading, “K” Line America, Inc. is entitled to the benefit of the Tokyo
27 District Court forum selection clause.
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1 BASED ON THE FOREGOING, IT IS HEREBY ORDERED that the action be
2 DISMISSED against Kawasaki Kisen Kaisha, Ltd. and “K” Line America, Inc. on the grounds
3 that the parties agreed in the forum selection clause of the bills of lading that any action under the
4 bills of lading or in connection with the carriage of goods shall be brought in the Tokyo District
5 Court in Japan.

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7 Dated: April __, 2008

8 UNITED STATES DISTRICT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2008, a copy of the foregoing [PROPOSED] ORDER GRANTING THE MOTION OF KAWASAKI KISEN KAISHA, LTD. AND "K" LINE AMERICA, INC. TO DISMISS PURSUANT TO THE TOKYO DISTRICT COURT FORUM SELECTION CLAUSE was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: March 13, 2008

/s/ Alan Nakazawa
Alan Nakazawa